

1
2
3
4
5
6 **BEFORE THE**
7 **BOARD OF REGISTERED NURSING**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2011-852

11 **KIM MARIE DRIGGERS**
12 **c/o Tommy Leamy**
13 **12444 TX Hwy 11**
14 **Hughes Springs, TX 75656**
15 **Registered Nurse License No. 660569**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about April 15, 2011, Complainant Louise R. Bailey, M.Ed., RN, in her official
19 capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer
20 Affairs, filed Accusation No. 2011-852 against Kim Marie Driggers ("Respondent") before the
21 Board of Registered Nursing.

22 2. On or about July 14, 2005, the Board of Registered Nursing ("Board") issued
23 Registered Nurse License No. 660569 to Respondent. The Registered Nurse License expired on
24 October 31, 2008, and has not been renewed. Pursuant to Business and Professions Code section
25 118, this lapse in licensure however, does not deprive the Board of jurisdiction to maintain this
disciplinary action against Respondent's license.

26 3. On or about April 15, 2011, Respondent was served by Certified and First Class Mail
27 copies of the Accusation No. 2011-852, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to California Code of Regulations, title 16,
2 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
3 on record with the Board was and is:

4 **c/o Tommy Leamy**
5 **12444 TX Hwy 11**
Hughes Springs, TX 75656.

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and Business & Professions Code section 124.

8 5. The aforementioned documents were not returned by the U.S. Postal Service as
9 undeliverable.

10 6. Government Code section 11506 states, in pertinent part:

11 “(c) The respondent shall be entitled to a hearing on the merits if the
12 respondent files a notice of defense, and the notice shall be deemed a specific denial
13 of all parts of the accusation not expressly admitted. Failure to file a notice of
defense shall constitute a waiver of respondent's right to a hearing, but the agency in
its discretion may nevertheless grant a hearing.”

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2011-
16 852.

17 8. California Government Code section 11520 states, in pertinent part:

18 “(a) If the respondent either fails to file a notice of defense or to appear at the
19 hearing, the agency may take action based upon the respondent's express admissions
20 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.”

21 9. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. 2011-852, finds
26 that the charges and allegations in Accusation No. 2011-852, are separately and severally, found
27 to be true and correct by clear and convincing evidence.
28

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$527.50 as of May 12, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Kim Marie Driggers has subjected her Registered Nurse License No. 660569 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. **Disciplinary Action by the Texas Board of Nursing.** Respondent is subject to disciplinary action under Code section 2761, subdivision (a)(4), on the grounds of unprofessional conduct in that Respondent was disciplined by the Texas Board of Nursing (“Texas Board”).

i. On or about October 29, 2009, pursuant to the Agreed Order, in the disciplinary action entitled *In the Matter of Registered Nurse License Number 606232 and Vocational Nurse License Number 145025 issued to Kim Marie Driggers*, the Texas Board disciplined Respondent's Registered Nurse and Vocational Nurse licenses by ordering Respondent to successfully complete the Texas Peer Assistance Program for Nurses ("TPAPN"). The basis for the discipline is as follows:

ii. On or about April 18, 2008, while employed as a Registered Nurse at Paris Regional Medical Center, Paris, Texas, Respondent had slurred speech, extreme drowsiness, and was falling asleep while charting. On or about that same day, Respondent tested positive for benzodiazepine and marijuana.

iii. On or about April 28, 2008, while employed as a Registered Nurse at Paris Regional Medical Center, Paris, Texas, Respondent was unable to function, was slurring her speech, and was acting impaired. On or about that same day, Respondent tested positive for Propoxyphene.

1 iv. On or about April 28, 2008, while employed as a Registered Nurse at Paris
2 Regional Medical Center, Paris, Texas, Respondent administered Demerol 75 mg and Phenergan
3 25 mg IVP, to an 86 year-old patient. The physician's order read Demerol 25 mg instead of 75
4 mg.

5 **b. Unlawful Possession of a Controlled Substance.** Respondent is subject to
6 disciplinary action under Code section 2762, subdivision (a), in that Respondent unlawfully
7 possessed controlled substances. The conduct is more particularly described in paragraph 3,
8 subparagraphs (a) (i-iv), inclusive, above, and herein incorporated by reference.

9 **c. Dangerous Use of Drugs.** Respondent is subject to disciplinary action under Code
10 section 2762, subdivision (b), in that Respondent used a controlled substance to an extent or in a
11 manner dangerous or injurious to herself, any other person, or the public or to the extent that such
12 use impairs her ability to conduct with safety to the public the practice authorized by her license.
13 The conduct is more particularly described in paragraph 3, subparagraphs (a) (i-iv), inclusive,
14 above, and herein incorporated by reference.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

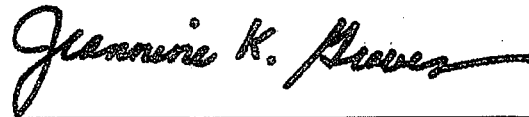
ORDER

IT IS SO ORDERED that Registered Nurse License No. 660569, heretofore issued to Respondent Kim Marie Driggers, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 5, 2011.

It is so ORDERED July 6, 2011



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Decision and Order, Case No. 2011-852

Board of Registered Nursing

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2011-852

11 **KIM MARIE DRIGGERS**
12 c/o Tommy Leamy
12444 TX Hwy 11
13 Hughes Springs, TX 75656
Registered Nurse License No. 660569

A C C U S A T I O N

14 Respondent.
15

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about July 14, 2005, the Board of Registered Nursing issued Registered Nurse
22 License Number 660569 to Kim Marie Driggers ("Respondent"). The Registered Nurse License
23 expired on October 31, 2008, and has not been renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code ("Code") unless otherwise indicated.
28

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

5. Section 118, subdivision (b) of the Code provides, in pertinent part:

“(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2761 of the Code provides, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action...”

7. Section 2762 of the Code provides, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or

1 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
2 or in a manner dangerous or injurious to himself or herself, any other person, or
3 the public or to the extent that such use impairs his or her ability to conduct with
4 safety to the public the practice authorized by his or her license..."

5 8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 9. Section 4022 of the Code provides that:

9 "Dangerous drug" or "dangerous device" means any drug or device unsafe
10 for self-use in humans or animals, and includes the following:

11 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
12 without prescription," "Rx only," or words of similar import.

13 (b) Any device that bears the statement: "Caution: federal law restricts this
14 device to sale by or on the order of a _____," "Rx only," or words of similar
15 import, the blank to be filled in with the designation of the practitioner licensed to
16 use or order use of the device.

17 (c) Any other drug or device that by federal or state law can be lawfully
18 dispensed only on prescription or furnished pursuant to Section 4006."

19 COST RECOVERY

20 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licentiate found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 FIRST CAUSE FOR DISCIPLINE

25 (Disciplinary Action by the Texas Board of Nursing)

26 11. Respondent is subject to disciplinary action under Code section 2761, subdivision
27 (a)(4), on the grounds of unprofessional conduct in that Respondent was disciplined by the Texas
28 Board of Nursing ("Texas Board").

12. On or about October 29, 2009, pursuant to the Agreed Order, in the disciplinary
action entitled *In the Matter of Registered Nurse License Number 606232 and Vocational Nurse
License Number 145025 issued to Kim Marie Driggers*, the Texas Board disciplined
Respondent's Registered Nurse and Vocational Nurse licenses by ordering Respondent to
successfully complete the Texas Peer Assistance Program for Nurses ("TPAPN"). The basis for

1 the discipline is as follows:

- 2 a. On or about April 18, 2008, while employed as a Registered Nurse at Paris Regional
3 Medical Center, Paris, Texas, Respondent had slurred speech, extreme drowsiness,
4 and was falling asleep while charting. On or about that same day, Respondent tested
5 positive for benzodiazepine and marijuana.
- 6 b. On or about April 28, 2008, while employed as a Registered Nurse at Paris Regional
7 Medical Center, Paris, Texas, Respondent was unable to function, was slurring her
8 speech, and was acting impaired. On or about that same day, Respondent tested
9 positive for Propoxyphene.
- 10 c. On or about April 28, 2008, while employed as a Registered Nurse at Paris Regional
11 Medical Center, Paris, Texas, Respondent administered Demerol 75 mg and
12 Phenergan 25 mg IVP, to an 86 year-old patient. The physician's order read Demerol
13 25 mg instead of 75 mg.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Unlawful Possession of a Controlled Substance)**

16 13. Respondent is subject to disciplinary action under Code section 2762, subdivision
17 (a), in that Respondent unlawfully possessed controlled substances. The conduct is more
18 particularly described in paragraph 12, subparagraphs (a) through (c), inclusive, above, and herein
19 incorporated by reference.

20 **THIRD CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of Drugs)**

22 14. Respondent is subject to disciplinary action under Code section 2762, subdivision
23 (b), in that Respondent used a controlled substance to an extent or in a manner dangerous or
24 injurious to herself, any other person, or the public or to the extent that such use impairs her
25 ability to conduct with safety to the public the practice authorized by her license. The conduct is
26 more particularly described in paragraph 12, subparagraphs (a) through (c), inclusive, above, and
27 herein incorporated by reference.


28 ///

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 660569, issued to Kim Marie Driggers;
2. Ordering Kim Marie Driggers to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: April 15, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2011501689
50873943.doc